IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4785 OF 2005

M/s.Laxmichand Dayabhai & Co. ...Petitioner.
Vs.
Mr.Ramniklal Ramji Daya & Ors. ...Respondents.
....
Mr. J. P. Cama i/b. Sanjay Udeshi for the Petitioner.
Mr. C. C. Torgal with Mr. L.R. Mohite for Respondent No.1.
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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

August 9, 2005.

P.C.:

The First Respondent is a workman stated to have been engaged in the establishment of the Petitioner. The Petitioner carried on business from its premises situated at 32, Kazi Syed Street, Masjid Bunder, Mumbai. On 27th August 1987, a theft of 20 bags of coriander seed took place from the Godown of the Petitioner which came to be reported to Pydhoni Police Station. The First Respondent was arrested in connection with the said theft. It is the case of the Petitioner that from 8th September 1987, the First Respondent who was engaged to look after the stock in

the Godown and for delivering goods to customers, failed to report for work. A criminal case came to be instituted against the First Respondent. According to the Petitioner, after the wholesale market was shifted to Navi Mumbai in 1991, the business came to be conducted from new premises situated at D-23, APMC Market, Phase II, Vashi, Navi Mumbai. The First Respondent is alleged to have been working in the neighbourhood in the establishment of Narottamdas Harivallabhadas at D-55, APMC Market, Vashi, Navi Mumbai. The case of the Petitioner is that in October 1997, the activity of a commission agent was closed down and from 1st April 1998, the trading activity was also stopped, after which no business is carried on. On 4th June 1998, the Petitioner is alleged to have sold the shop and godown in the APMC Market at Vashi to a partnership firm constituted by some of the partners of the Petitioner at and for a consideration of Rs.11 lakhs. The Market Committee is stated to have been informed by a letter dated 30th July 1998. The criminal case that was instituted against the First Respondent resulted in an order of acquittal on 10th December 1998. On 21st December 1998, the First Respondent raised an

industrial dispute and a reference to adjudication was made therein. On 22nd February 1999, the Petitioner addressed a letter to the Conciliation Officer contending that the business has been closed and no dispute could be raised. The Labour Court proceeded ex-parte against the Petitioner and passed an award on 21st January 2000 granting reinstatement with continuity of service with full back wages with effect from 8th September 1997. The award was notified on 22nd February 2001. Thereafter, the First Respondent moved the Deputy Commissioner of Labour to change the date of termination in the order of Reference from 8th September 1997 to 8th September 1987 and a corrigendum was issued on 3rd March 2000. On the basis of the corrigendum which was treated as a Review Application (Misc. Reference (IDA) NO.13 of 2000 in Reference (IDA) No.275 of 1999), the Labour Court passed an order dated 19th June 2000, directing the Petitioner to reinstate the First Respondent with continuity of service and with full back wages, with effect from 8th September 1987.

2. The Petitioner is stated to have learnt on 8th March 2001

of the passing of the award and of the order on the Review Application when a representative of the Collector's office visited the premises in connection with the execution proceedings pursuant to the certificate issued by the office of the Commissioner of Labour. The Petitioner received a copy of the aforesaid award on 20th March 2001 and on 21st March 2001 filed an application for restoration of the Reference. This application was dismissed by the Labour Court on 21st April 2005. The Labour Court came to the conclusion that it had been rendered functus officio upon the award becoming enforceable under Section 17A of the Act. The application was, therefore, dismissed.

3. On behalf of the Petitioner, it has been submitted that (i) In view of the law laid down by the Supreme Court in **Nedungadi Bank Ltd. v. K. P. Madhavankutty,** 2000 I CLR 671, no industrial dispute survived. According to the Petitioner, the First Respondent had stopped reporting for work since 8th September 1987 and a demand was raised for the first time nearly 11 years thereafter in December 1998; (ii) The Petitioner had ceased to carry on any

business and closed down its activities since 1st April 1998. Reliance had been placed on the Income Tax Returns and on the assessment carried out by the Sales Tax Authorities; (iii) The First Respondent was in gainful employment ever since 1987, details whereof have been furnished in para 23 of the Petition. In our view, sufficient ground has been made out for setting aside of the ex-parte award of the Labour Court. We have also had due regard to the nature of the defence that has been set up on behalf of the Petitioner. The contention of the Petitioner that an industrial dispute was raised for the first time 11 years after the First Respondent ceased to report for work in September 1987 and that having regard to the law laid down by the Supreme Court, no industrial dispute would survive at that stage does merit serious consideration. In these circumstances, we are of the view that it would be appropriate in the interests of justice that the Petitioner is furnished with an opportunity of defending the proceedings arising out of the reference. At the same time, it is in the interests of justice that a conditional order be passed. The First Respondent, it is common ground, had been a workman in the

service of the Petitioner for at least 25 years. The First Respondent has admittedly not been paid any part of the terminal dues including dues on account of retrenchment compensation. The last drawn salary of the First Respondent was Rs.1300/- per month, according to the statement of claim before the Labour Court. In these circumstances, we are of the view that the following order would meet the ends of justice:

-(i) The Petitioner shall, within a period of four weeks from today, deposit an amount of Rs.40,000/- before the Third Labour Court at Thane in Reference (IDA) No.275 of 1999;

-(ii) Conditional on the aforesaid deposit, the award of the Labour Court dated 21st January 2000 (Exh.H) and the orders dated 19th June 2000 (Exh.J) and 21st April 2005 (Exh.N) shall stand quashed and set aside;

-(iii) In that event, the Reference shall stand restored to the file of the Third Labour Court for hearing and disposal. The Labour Court will expedite the Reference and will endeavour to do

so within a period of six months thereafter;

-(iv) The First Respondent shall be at liberty to withdraw an amount of Rs.30,000/- from and out of the deposit of Rs.40,000/- made by the Petitioner subject to filing an undertaking in writing to bring back the amount if so directed by the Labour Court.

-(v) All contentions on merits are kept open to be urged by the contesting parties before the Labour Court

The petition is accordingly disposed of. There shall be no order as to costs.

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